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3-9-01
MA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

Plaintiff

v.

DR. ROBERT CLARK,
MARTIN L. DRAGOVICH,
JOHN A. PALAKOVICH,
ROBERT N. NOVOTNEY,
MICHAEL J. KAZOR, and
JOHN ANDRADE,

Defendants

CIVIL NO. 1:CV-00-1090

FILED
HARRISBURG, PA

MAR 08 2001

MARY E. D'ANDREA, CLERK
Per MA
Deputy Clerk

ORDER

Before the court is a report by the magistrate judge recommending that the captioned action be dismissed for Plaintiff's failure to pay the \$150.00 filing fee following the revocation of his in forma pauperis status by order dated January 9, 2001. Plaintiff has filed objections to the report and recommendation.

There is no dispute that Plaintiff has three or more actions or appeals before this court that were dismissed as frivolous or for failure to state a claim. To be relieved from filing another suit without prepayment of the filing fee, Plaintiff must be under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

In Abdul Akbar v. McKelvie, 2001 U.S. App. Lexis 1281 (3d Cir. 01/29/01), the United States Court of Appeals for the Third Circuit held that "imminent danger" relates to the time when the prisoner brings the action.

The action was brought on June 5, 2000. An amended complaint was filed on August 3, 2000. Plaintiff alleges that the failure of Defendants to treat his mental illness violates his Eighth Amendment rights as well as the Constitution of the Commonwealth of Pennsylvania and constitutes medical malpractice and negligence.

Plaintiff alleges that he is in disciplinary custody; that his mental illness causes him to act out for which he is disciplined, and that he is not receiving treatment.

At or about the time of the filing of the instant complaint, Plaintiff was evaluated by mental health professionals at SCI-Waymart and was found not to be suicidal and further found that Plaintiff was manipulative and his "suicide attempts" were attempts to manipulate his environment. Based on the foregoing, the magistrate judge revoked the in forma pauperis status.

Plaintiff, except for his continued repetition of the same allegations in the complaint, offers nothing to refute the professional findings of the mental health professionals at SCI-Waymart. Thus, the conclusion of the magistrate judge that Plaintiff was not in imminent danger at the time of the filing of the complaint is supported by the evidence of record.

Therefore, **IT IS ORDERED THAT:**

- 1) This court's order of February 28, 2001 is reinstated and the captioned action is dismissed.
- 2) Defendant's need not respond to Plaintiff's objections.
- 3) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.
- 4) The Clerk of Court shall close the file.


SYLVIA H. RAMBO
United States District Judge

Dated: March 8, 2001.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

March 8, 2001

Re: 1:00-cv-01090 Jae v. Clark

True and correct copies of the attached were mailed by the clerk
to the following:

John Richard Jae
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cc:		
Judge	(X) Rambo	() Pro Se Law Clerk
Magistrate Judge	(X) Smyser	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	(X)	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail

to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()
Bankruptcy Court ()
Other _____ ()

MARY E. D'ANDREA, Clerk

DATE: March 8th, 2001

BY:


Deputy Clerk